

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
BOSTON, MASSACHUSETTS

FILED
IN CLERKS OFFICE

2005 MAY 20 P 1:54

U.S. DISTRICT COURT
DISTRICT OF MASS.

Civil Action:

05 11063 RGS

WALDIR DA COSTA

Plaintiff

v.

MICHAEL CHERTOFF

Secretary, U.S. Department
of Homeland Security;

EDUARDO AGUIRRE, JR.

Director, U.S. Citizenship
And Immigration Services,

DENIS RIORDAN, Boston District

Director, U.S. Citizenship

and Immigration Services'

ROBERT S. MUELLER III,

Director, Federal Bureau of
Investigations

Defendants

RECEIPT # 64450
AMOUNT \$ 250.00
SUMMONS ISSUED 6
LOCAL RULE 4.1 -
WAIVER FORM -
MCF ISSUED -
BY DPTY. CLK. M.P.
DATE 5/20/05

MAGISTRATE JUDGE JGD

COMPLAINT FOR MANDAMUS

I. INTRODUCTION

1. Waldir Da Costa (the "Plaintiff" or "Mr. Da Costa"), by and through his undersigned attorney, brings this civil action for mandamus to compel Defendants and those acting under them to rule upon the Application for Adjustment of Status

to Lawful Permanent Resident ("LPR") a/k/a a Green Card duly filed by the Plaintiff on or about July 15, 2002 ("I-485 Application").

II. PARTIES

2. The Plaintiff is a native and citizen of Brazil, who currently resides at 185 Arthur Street, Framingham, MA 01702.
3. The Defendant, Michael Chertoff, is the Secretary of the U.S. Department of Homeland Security ("DHS"), and this action is brought against him in his official capacity. He is charged with, *inter-alia*, "[a]ll authorities and functions of the Department of Homeland Security to administer and enforce the immigration laws." 8 C.F.R. Sec. 1103(a).
4. USCIS is an agency within DHS and is an agency of the U.S. Government. The USCIS has assumed the immigration benefits and services functions of the Immigration and Naturalization ("INS"), which was eliminated effective March 1, 2003. USCIS has responsibility for administering the immigration laws and applicable regulations.
5. The Defendant, Eduardo Aguirre, Jr., is the National Director of USCIS and this action is brought against him in his official capacity. In his capacity as Director, Mr. Aguirre administers the immigration laws on behalf of the

Secretary of Homeland Security and the DHS throughout the United States.

6. The Defendant, Denis Riordan, is the District Director for the Boston District Office of USCIS and this action is brought against him in his official capacity. In his capacity as District Director, he has decision-making authority with respect to the matters alleged in this Complaint. He also has supervisory authority over all operations of USCIS within his district, including, but not limited to, adjudicating the Plaintiff's I-485 Application.
7. The Defendant Robert S. Mueller III is the Director of the Federal Bureau of Investigations ("FBI") and this action is brought against him in his official capacity. He is the official ultimately in charge of conducting security clearances on any individual seeking to adjust their immigrant status in the United States.

III. JURISDICTION AND VENUE

8. This is a civil action brought pursuant to 28 U.S.C. 1331 (Federal Question Jurisdiction) 28 U.S.C. Sec. 1361 (the Mandamus Act) and 5 U.S.C. Sec. 551 *et seq.* (the Administrative Procedures Act) to compel the Defendants and those working under them to perform a duty that they owe to the Plaintiffs. This Court may grant relief pursuant to 28 U.S.C. Sec. 1361, 2202, and 5 U.S.C. Sec. 702.

9. Costs and fees will be sought pursuant to the Equal Access to Justice Act, 5 U.S.C. §504, 28 U.S.C. §2412(d), et seq.
10. There are no administrative remedies available to the Plaintiff to redress the grievances described herein.
11. Venue is properly with this Court, pursuant to 28 U.S.C. §1391(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where, upon information and belief, a Defendant resides and where a substantial part of the events or omissions giving rise to Plaintiff's claim occurred. More specifically, an interview was conducted regarding Plaintiff's I-485 Application at the Boston District Office of USCIS, and, to Plaintiff's knowledge, remains pending there.

IV. REMEDY

12. The Plaintiff is seeking an order to compel the Defendants and those working under them to adjudicate the Plaintiff's pending application for Adjustment of Status and an award of reasonable attorney's fees and costs associated with bring said action.

V. STATEMENT OF THE FACTS

13. The Plaintiff filed an I-485 Application on or about July 22, 2004 with the INS (now USCIS) Service Center in St. Albans, Vermont, which is the proper filing place for

employment-based I-485 Applications. A copy of the I-485 Application is attached hereto as Exhibit A.

14. Mr. Da Costa's I-485 Application was based upon an approved immigrant visa petition ("I-140") filed on Mr. Da Costa's behalf by his employer. A copy of the I-140 Approval Notice is attached hereto as Exhibit B.
15. Through the filing of the I-485, the Plaintiff is seeking adjustment to an LPR a/k/a obtaining a "Green Card".
16. On or about July 19, 2004, the Defendants through their designated agent i.e., Examinations Officer Fulchini, interviewed the Plaintiff on his I-485 Application at the USCIS Regional Office in Boston, Massachusetts.
17. At the conclusion of the interview, Officer Fulchini declined to make a decision on the case and stated that she needed to verify his employment and his security checks were pending. She made no requests for additional documentation from the Plaintiff regarding his application.
18. The Plaintiff, through Counsel, has made repeated efforts to secure a decision from USCIS. For example, the Plaintiff sent repeated written requests for adjudication of the I-485 Application to USCIS. Copies of said letters are attached hereto as Exhibit C.
19. USCIS has failed to respond to the written request described at Para. 18, in any manner whatsoever.

20. As of the date of this complaint, there has been no decision issued by the Defendants on the I-485 Application.
21. As of the date of this complaint, the Plaintiff has received no notification that the required security checks have been completed.
22. The Plaintiff has no administrative remedies available.
23. The Defendants have arbitrarily, willfully and unreasonably delayed the adjudication of the Plaintiff's Application.
24. As a result of the Defendants' willful and unreasonable delay in adjudicating Plaintiff's Application, the Plaintiff has been harmed. Until the I-485 Application is adjudicated, the Plaintiff is unable to travel overseas to visit his family, unable to plan for the future, unable to accrue time as lawful permanent residents for eventual qualification for U.S citizenship, and is constantly fearful that he will suffer deportation at some future date.
25. The Plaintiff has been further damaged in that their employment authorization is tied to his status as applicants for permanent residency and is limited to increments not to exceed one year. Therefore, the Plaintiff is forced to repeatedly apply (and pay) for extensions of employment authorization.
26. The Defendants owe the Plaintiff the duty to act upon his Application for Adjustment of Status and have unreasonably failed to perform that duty.

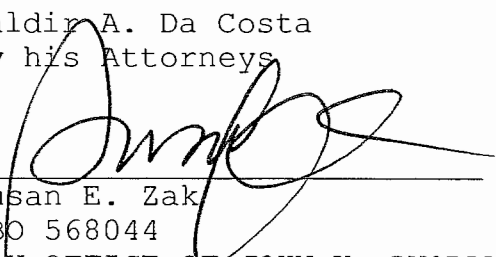
27. No other remedy exists for Plaintiff to resolve Defendants' delay.

WHEREFORE, the Plaintiff prays that this Honorable Court:

- 1) Order the Defendants to have their agents rule upon the I-485 Application filed by the Plaintiff;
- 2) Order that the FBI complete the required security checks;
- 3) Grant such other and further relief as this Honorable Court deems proper under the circumstances; and
- 4) Award attorney's fees and costs of this action pursuant to the Equal Access to Justice Act ("EAJA").

Respectfully submitted,

The Plaintiffs
Waldin A. Da Costa
By his Attorneys



Susan E. Zak
BBO 568044
LAW OFFICE OF JOHN K. DVORAK
P.O. Box 8788
Boston, MA 02114

mandamus-dacosta.4101

START HERE - Please Type or Print

Part 1. Information about you.

Family Name Da Costa	Given Name Waldir	Middle Initial A
Address - C/O		
Street Number and Name 22B Drapper Road		Apt. #
City Framingham		
State MA	Zip Code 01702	
Date of Birth (month/day/year) 09/19/1977	Country of Birth Brazil	
Social Security # none	A # (if any) none	
Date of Last Arrival (month/day/year) 01/23/2000	I-94 # n/a	
Current INS Status EWI	Expires on (month/day/year) n/a	

Part 2. Application Type. (Check one)

I am applying for adjustment to permanent resident status because

- a. ☒ an immigrant petition giving me an immediately available immigrant visa number has been approved. (Attach a copy of the approval notice-- or a relative, special immigrant juvenile, or special immigrant military visa petition filed with this application that will give you an immediately available visa number, if approved.)
- b. ☐ My spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category that allows derivative status for spouses and children.
- c. ☐ I entered as a K-1 fiancé(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiancé(e) [Attach a copy of the fiancé(e) petition approval notice and the marriage certificate.]
- d. ☐ I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.
- e. ☐ I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.
- f. ☐ I am the husband, wife, or minor unmarried child of a Cuban described in (e) and am residing with that person, and was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.
- g. ☐ I have continuously resided in the U.S. since before January 1, 1972.
- h. ☐ Other basis of eligibility. Explain. (If additional space is needed, use a separate piece of paper.)

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the U.S. as a nonimmigrant or parolee, or as of May 2, 1964, whichever date is later, and: (Check one)

- i. ☐ I am a native or citizen of Cuba and meet the description in (e), above.
- j. ☐ I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (f), above.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
<input type="checkbox"/> Applicant Interviewed	

Section of Law

- ☐ Sec. 209(b), INA
☐ Sec. 13, Act of 9/11/57
☐ Sec. 245, INA
☐ Sec. 249, INA
☐ Sec. 1 Act of 11/2/66
☐ Sec. 2 Act of 11/2/66
☐ Other

Country Chargeable

Eligibility Under Sec. 245

- ☐ Approved Visa Petition
☐ Dependent of Principal Alien
☐ Special Immigrant
☐ Other

Preference

Action Block

**To Be Completed by
Attorney or Representative, if any**

☒ Fill in box if G-28 is attached to represent the applicant
VOLAG#
ATTY State License #

Continued on back.

Part 3. Processing Information

A. City/Town/Village of Birth Itapaci		Current occupation Cook	
Your mother's first name Lazara		Your father's first name Braz	
Give your name exactly how it appears on your Arrival/Departure Record (Form I-94) n/a			
Place of last entry into the U.S. (City/State) Sam Diego, California		In what status did you last enter? (Visitor, Student, exchange alien, crewman, temporary worker, without inspection, etc.) EWI	
Were you inspected by a U.S. Immigration Officer? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Nonimmigrant Visa Number n/a		Consulate where Visa was issued n/a	
Date Visa was issued (month/day/year) n/a	Sex: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Marital Status <input checked="" type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed	
Have you ever before applied for permanent resident status in the U.S.? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If you checked "Yes," give date and place of filing and final disposition.			

B. List your present husband/wife, all of your sons and daughters (if you have none, write "none". If additional space is needed, use separate paper).

Family Name Andrade	Given Name Rebecca	Middle Initial T	Date of Birth (month/day/year) 01/20/1977
Country of Birth Brazil	Relationship Spouse	A # n/a	Applying with you? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Family Name Andrade	Given Name Stephanie	Middle Initial S	Date of Birth (month/day/year) 01/08/2002
Country of Birth USA	Relationship Daughter	A # n/a	Applying with you? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with you? <input type="checkbox"/> Yes <input type="checkbox"/> No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with you? <input type="checkbox"/> Yes <input type="checkbox"/> No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with you? <input type="checkbox"/> Yes <input type="checkbox"/> No

C. List your present and past membership in or affiliation with every political organization, association, fund, foundation, party, club, society, or similar group in the United States or in other places since your 16th birthday. Include any foreign military service in this part. If none, write "none". Include the name(s) of organization(s), location(s), dates of membership from and to, and the nature of the organization(s). If additional space is needed, use a separate piece of paper.

Part 3. Processing Information (Continued)

Please answer the following questions. (If your answer is "Yes" on any one of these questions, explain on a separate piece of paper. Answering "Yes" does not necessarily mean that you are not entitled to register for permanent residence or adjust status).

1. Have you ever, in or outside the U.S.:
 - a. knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested? ☐ Yes ☒ No
 - b. been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations? ☐ Yes ☒ No
 - c. been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action? ☐ Yes ☒ No
 - d. exercised diplomatic immunity to avoid prosecution for a criminal offense in the U.S.? ☐ Yes ☒ No
2. Have you received public assistance in the U.S. from any source, including the U.S. government or any state, county, city, or municipality (other than emergency medical treatment), or are you likely to receive public assistance in the future? ☐ Yes ☒ No
3. Have you ever:
 - a. within the past 10 years been a prostitute or procured anyone for prostitution, or intend to engage in such activities in the future? ☐ Yes ☒ No
 - b. engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling? ☐ Yes ☒ No
 - c. knowingly encouraged, induced, assisted, abetted or aided any alien to try to enter the U.S. illegally? ☐ Yes ☒ No
 - d. illicitly trafficked in any controlled substance, or knowingly assisted, abetted or colluded in the illicit trafficking of any controlled substance? ☐ Yes ☒ No
4. Have you ever engaged in, conspired to engage in, or do you intend to engage in, or have you ever solicited membership or funds for, or have you through any means ever assisted or provided any type of material support to, any person or organization that has ever engaged or conspired to engage, in sabotage, kidnapping, political assassination, hijacking, or any other form of terrorist activity? ☐ Yes ☒ No
5. Do you intend to engage in the U.S. in:
 - a. espionage? ☐ Yes ☒ No
 - b. any activity a purpose of which is opposition to, or the control or overthrow of, the Government of the United States, by force, violence or other unlawful means? ☐ Yes ☒ No
 - c. any activity to violate or evade any law prohibiting the export from the United States of goods, technology or sensitive information? ☐ Yes ☒ No
6. Have you ever been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party? ☐ Yes ☒ No
7. Did you, during the period March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist or otherwise participate in the persecution of any person because of race, religion, national origin or political opinion? ☐ Yes ☒ No
8. Have you ever engaged in genocide, or otherwise ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin, or political opinion? ☐ Yes ☒ No
9. Have you ever been deported from the U.S., or removed from the U.S. at government expense, excluded within the past year, or are you now in exclusion or deportation proceedings? ☐ Yes ☒ No
10. Are you under a final order of civil penalty for violating section 274C of the Immigration Act for use of fraudulent documents or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the U.S., or any other immigration benefit? ☐ Yes ☒ No
11. Have you ever left the U.S. to avoid being drafted into the U.S. Armed Forces? ☐ Yes ☒ No
12. Have you ever been a J nonimmigrant exchange visitor who was subject to the two-year foreign residence requirement and not yet complied with that requirement or obtained a waiver? ☐ Yes ☒ No
13. Are you now withholding custody of a U.S. Citizen child outside the U.S. from a person granted custody of the child? ☐ Yes ☒ No
14. Do you plan to practice polygamy in the U.S.? ☐ Yes ☒ No

Continued on back

Form I-485 (Rev. 02/07/00)N Page 3

Part 4. Signature. *(Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.)*

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. I authorize the release of any information from my records which the INS needs to determine eligibility for the benefit I am seeking.

Selective Service Registration. The following applies to you if you are a man at least 18 years old, but not yet 26 years old, who is required to register with the Selective Service System: I understand that my filing this adjustment of status application with the Immigration and Naturalization Service authorizes the INS to provide certain registration information to the Selective Service System in accordance with the Military Selective Service Act. Upon INS acceptance of my application, I authorize INS to transmit to the Selective Service System my name, current address, Social Security number, date of birth and the date I filed the application for the purpose of recording my Selective Service registration as of the filing date. If, however, the INS does not accept my application, I further understand that, if so required, I am responsible for registering with the Selective Service by other means, provided I have not yet reached age 26.

<i>Signature</i>	<i>Print Your Name</i>	<i>Date</i>	<i>Daytime Phone Number</i>
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	Waldir DA COSTA		
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Please Note: If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you may not be found eligible for the requested document and this application may be denied.

Part 5. Signature of person preparing form if other than above. *(Sign Below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

<i>Signature</i>	<i>Print Your Name</i>	<i>Date</i>	<i>Daytime Phone Number</i>
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*Firm Name
and Address*

START HERE - Please Type or Print

Part 1. Information about applicant

Family Name Da Costa	First Name Waldir	Middle Name Andrade
Address - C/O		
Street Number and Name 22B Drapper Road		Apt. Suite
City Framingham	State or Province MA	
Country USA	ZIP/Postal Code 01702	
INS A # none	Date of Birth (month/day/year) 09/19/1977	Country of Birth Brazil

Part 2. Basis for Eligibility (check one)

1. On Form I-485, Part 2, I checked application type (check one):

- | | |
|--|-----------------------------------|
| a. <input checked="" type="checkbox"/> An immigrant petition. | Go to #2. |
| b. <input type="checkbox"/> My spouse or parent applied. | Go to #2. |
| c. <input type="checkbox"/> I entered as a K-1 fiancé. | Stop Here. Do Not File This Form. |
| d. <input type="checkbox"/> I was granted asylum. | Stop Here. Do Not File This Form. |
| e. <input type="checkbox"/> I am a native or citizen of Cuba. | Go to #3. |
| f. <input type="checkbox"/> I am the husband, wife or child of a Cuban. | Go to #3. |
| g. <input type="checkbox"/> I have continuously resided in the U.S. | Stop Here. Do Not File This Form. |
| h. <input type="checkbox"/> Other. | Go to #2 |
| i. <input type="checkbox"/> I am already a permanent resident. | Stop Here. Do Not File This Form. |
| j. <input type="checkbox"/> I am already a permanent resident and am the husband, wife or unmarried child of a Cuban | Stop Here. Do Not File This Form. |

2. I have filed Form I-360 and I am applying for adjustment of status as a special immigrant juvenile court dependent or a special immigrant who has served in the United States Armed Forces (check one).

- ☐ Yes Stop Here. Do Not File This Form. ☒ No Go to #3.

3. On Form I-485, Part 2, I checked block (e) or (f) and I last entered the United States legally after having been inspected and admitted or paroled. ☐ Yes Stop Here. Do Not File This Form. ☒ No Go to #11.

4. I last entered the United States (check one):

- | | | | |
|--|------------|---|-----------|
| <input type="checkbox"/> As a stowaway. | Go to #11. | <input type="checkbox"/> Legally without a visa as a visitor for tourism or business. | Go to #5. |
| <input type="checkbox"/> Legally as a crewman (D-1/D-2 visa). | Go to #11. | <input type="checkbox"/> Legally as a parolee. | Go to #5. |
| <input checked="" type="checkbox"/> Without inspection. | Go to #11. | <input type="checkbox"/> Legally with another type of visa (show type _____). | Go to #5. |
| <input type="checkbox"/> Legally in transit without visa status. | Go to #11. | | |

5. I last entered the United States legally without a visa as a visitor for tourism or business, and I am applying for adjustment of status as the spouse, unmarried child (under 21 years of age), parent, widow or widower of a United States citizen (check one).

- ☐ Yes Stop Here. Do Not File This Form. ☒ No Go to #6.

6. I last entered the United States legally as a parolee, or with a visa (except as a crewman), or as a Canadian citizen without a visa, and I am applying for adjustment of status (check one).

- ☐ As the spouse, unmarried child less than 21 years old, parent, widow or widower of a United States citizen. Stop Here. Do Not File This Form.
- ☐ As a special immigrant retired international organization employee or family member of an international organization employee or as a special immigrant physician; and I have filed Form I-360. Stop Here. Do Not File This Form.
- ☒ Under some other category. Go to #7.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Interviewed	
File Reviewed	Class of Adjustment Code:
To Be Completed by Attorney or Representative, if any	
<input checked="" type="checkbox"/> Check if G-28 is attached showing you represent the petitioner	
VOLAG#	
ATTY State License #	

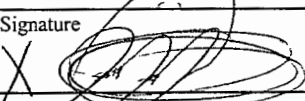
Part 2. Continue.

7. I am a national of the (former) Soviet Union, Vietnam, Laos or Cambodia who last entered the United States legally as a public interest parolee after having been denied refugee status, and I am applying for adjustment of status under Public Law 101-167 (check one).
☐ Yes Stop Here. Do Not File This Form. ☒ No Go to #8.
8. I have been employed in the United States after January 1, 1977 without INS authorization (check one).
☒ Yes Go to #9. ☐ No Go to #10.
9. I am applying for adjustment of status under the Immigration Nursing Relief Act (INRA); I was employed without INS authorization only on or before November 29, 1990, and I have always maintained a lawful immigration status while in the United States after November 5, 1986 (check one):
☐ Yes Stop Here. Do Not File This Form. ☒ No Go to #10.
10. I am now in lawful immigration status; and I have always maintained a lawful immigration status while in the United States after November 5, 1986 (check one).
☐ Yes Stop Here. Do Not File This Form.
☐ No, but I believe the INS will determine that my failure to be in or maintain a lawful immigration status was through no fault of my own or for technical reasons. Stop Here. Do Not File This Form, Attach an explanation regarding this question to your Form I-485 application.
☒ No Go to #11.
11. I am unmarried and less than 17 years old (check one).
☐ Yes Stop Here. File This Form and Form I-485. Pay only the fee required with Form I-485.
☒ No Go to #12.
12. I am the unmarried child of a legalized alien and am less than 21 years old, or I am the spouse of a legalized alien; and I have attached a copy of my receipt or approval notice showing that I have properly filed Form I-817, Application for Voluntary Departure under the Family Unity Program (check one).
☐ Yes Stop Here. File This Form and Form I-485. Pay only the fee required with Form I-485.
☒ No Go to #13.
13. File The Form and Form I-485. You must pay the additional sum:
\$ 220.00 - Fee required with Form I-485 * and
\$1,000.00 - Additional sum under section 245(i) of the Act
\$1,220.00 - Total amount you must pay.

*If you filed Form I-485 separately, attach a copy of your filing receipt and pay only the additional sum of \$1000.00. In #11 and / or #12, show the answer you would have given on the date you filed Form I-485.

Part 3. Signature. Read the information on penalties in the instruction before completing this section. If someone helped you prepare the petition he or she must complete Part 4.

I certify, under penalty of perjury under the laws of the United States of America, that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature 	Print Your Name Waldir Da Costa	Date	Daytime Telephone No.
---	------------------------------------	------	-----------------------

Please Note: If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested document and this application may be denied.

Part 4. Signature of person preparing form if other than above. (Sign Below)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date	Daytime Telephone No.
-----------	-----------------	------	-----------------------

Firm Name
and Address



RECEIPT NUMBER EAC-02-041-53407		CASE TYPE I140 IMMIGRANT PETITION FOR ALIEN WORKER
RECEIPT DATE November 19, 2001	PRIORITY DATE March 19, 2001	PETITIONER BERKSHIRE GRILL
NOTICE DATE December 12, 2001	PAGE 1 of 1	BENEFICIARY DA COSTA, WALDIR
KRISTEN KENNEY MCAULIFFE AND ASSOCIATES 430 LEXINGTON STREET NEWTON MA 02466		Notice Type: Approval Notice Section: Skilled Worker or Professional, Sec.203(b)(3)(A)(i) or (ii)

The above petition has been approved. The petition indicates that the person for whom you are petitioning in the United States and will apply for adjustment of status. He or she should contact the local INS office to obtain Form I-485, Application for Permanent Residence. A copy of this notice should be submitted with the application.

If the person for whom you are petitioning decides to apply for a visa outside the United States based on this petition, the petitioner should file Form I-824, Application for Action on an Approved Application or Petition, with this office to request that we send the petition to the Department of State National Visa Center (NVC).

The NVC processes all approved immigrant visa petitions that require consular action. The NVC also determines which consular post is the appropriate consulate to complete visa processing. It will then forward the approved petition to that consulate.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
SAINT ALBANS VT 05479-0001
Customer Service Telephone: (802) 527-4913



LAW OFFICES OF JOHN K. DVORAK, P.C.

ATTORNEY-AT-LAW

PO BOX 8788 • 180 CANAL STREET, 4th FLOOR • BOSTON, MA 02114 • (617) 723-4422 • FAX (617) 723-8305

JOHN K. DVORAK
Christopher W. Drinan

October 29 , 2004

EXAMS
Bureau of Citizenship and Immigration Services
JFK Federal Building
Government Center
Boston, MA 02203

Request to Adjudicate I-485 Application

RE: I-485 Application to Adjust Status
Applicant: Waldir A. DA SILVA
A#: 95-374-429
Interview Date: July 19, 2004

Dear BCIS Officer:

Above referenced Application was interviewed on July 19, 2004 regarding his I-485 Application. No additional documents were requested, but the application was not adjudicated pending security checks.

If you have received final security clearance, I would appreciate you adjudicating the case at your earliest convenience.

Sincerely,

John K. Dvorak

JKD:lo

LAW OFFICES OF JOHN K. DVORAK, P.C.

ATTORNEY-AT-LAW

PO BOX 8788 • 180 CANAL STREET, 4th FLOOR • BOSTON, MA 02114 • (617) 723-4422 • FAX (617) 723-8305

JOHN K. DVORAK
Christopher W. Drinan

September 24, 2004

EXAMS
Bureau of Citizenship and Immigration Services
JFK Federal Building
Government Center
Boston, MA 02203

Request to Adjudicate I-485 Application

RE: I-485 Application to Adjust Status
Applicant: Waldir A. DA COSTA
A#: 95-374-429
Interview Date: July 19, 2004

Dear BCIS Officer:

Above referenced Application was interviewed on July 19, 2004 regarding his I – 485 Application. No additional documents were requested, but the application was not adjudicated pending security checks.

If you have received final security clearance, I would appreciate you adjudicating the case at your earliest convenience.

Sincerely,

John K. Dvorak

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JOHN K. DVORAK
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August 25, 2004

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
IN CLERKS OFFICE

1. Title of case (name of first party on each side only)
- Waldir Da Costa v. Michael Chertoff

2005 MAY 20 P 1:54

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☒ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

05 11063 RGS

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

none

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☒ NO ☒

7. Do
- all
- of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

- A. If yes, in which division do
- all
- of the non-governmental parties reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Susan E. ZakADDRESS Law Office of John K. Dvorak, P.C., 180 Canal St., PO Box 8788 Boston, MA 02114TELEPHONE NO. 617 723-4422

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Waldir Da Costa

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Susan E. Zak Esq., Law Office of John K. Dvorak, 180 Canal St., 4th Floor, P.O. Box 8788, Boston, MA 02114

DEFENDANTS

Michael Chertoff, Sec. USDHS; Eduardo Aguirre, Jr., Dir. USCIS; Denis Riordan, Dist. Dir. USCIS; Robert S. Mueller III, Dir. FBI

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff (For Diversity Cases Only) and One Box for Defendant)

- 05-11063 RGS**
- ☐ 1 Citizen of this State
- ☐ 2 Citizen of Another State
- ☐ 3 Citizen or Subject of a Foreign Country
- ☐ 1 Incorporated or Principal Place of Business In This State
- ☐ 2 Incorporated and Principal Place of Business In Another State
- ☐ 3 Foreign Nation
- ☐ 4 PTF
- ☐ 5 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

- (Place an "X" in One Box Only)
- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Sec. 1361 (Mandamus Act); 5 U.S.C. Sec. 551 (Administrative Act)

Brief description of cause:

Mandamus Action seeking Order for USCIS to adjudicate the Plaintiff's Adjustment of Status Application

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE